

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION II

CACR07-781

FEBRUARY 13, 2008

LISA MARTIN

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2006-3590]

V.

HON. WILLARD PROCTOR, JR.,
JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

On April 13, 2007, in Pulaski County Circuit Court, appellant Lisa Martin was convicted of misdemeanor possession of marijuana, for which she was placed on probation for one year, and the felony of maintaining a drug premises, for which she received five years' probation. She appeals, contending that the trial court erred in denying her motion for directed verdict. We hold that there is sufficient evidence to sustain both convictions and affirm.

Appellant and her husband, Edward Martin, were charged with possession of a controlled substance with intent to deliver, possession of drug paraphernalia, and maintaining a drug premises based upon evidence found after execution of a search warrant on

appellant's home. The warrant was based upon information provided by a confidential informant who bought drugs from appellant's husband. During the search, police found a 454.06-gram brick of marijuana, a 450.97-gram brick of marijuana, a marijuana cigarette, and three more bags of marijuana weighing 8.54 grams, 187.08 grams and 22.64 grams. The bricks of marijuana were found in the master bedroom on the top shelf of a closet. Appellant's husband testified that the bricks belonged to him, that he had been in possession of them for two days, and that he had not yet paid for them.

When police arrived to execute the search, appellant was leaving the bathroom where police found the marijuana cigarette in an ashtray on the counter. Appellant cooperated with police and showed them where marijuana could be found on the coffee table in a box, wherein police found marijuana, screens, rolling papers, a tobacco grinder, and a razor blade. Appellant admitted to police that she used marijuana.

At trial, appellant moved for a directed verdict on both counts at the close of the State's case and again at the close of all evidence, and those motions were denied. Appellant was convicted after a bench trial of possession of marijuana and maintaining a drug premises. The trial court sentenced her to five years' probation on the felony charge of maintaining a drug premises and one year probation for misdemeanor possession. This appeal followed.

A motion for directed verdict is a challenge to the sufficiency of the evidence. *Simmons v. State*, 89 Ark. App. 34, 199 S.W.3d 711 (2004). To determine if evidence is sufficient, there must be substantial evidence, direct or circumstantial, to support the verdict. *Id.* Substantial evidence is that which is of sufficient force and character to compel a

conclusion one way or the other with reasonable certainty, without speculation or conjecture. *Mayo v. State*, 70 Ark. App. 453, 20 S.W.3d 419 (2000). In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State and considers only the evidence that supports the conviction. *Simmons, supra*.

Maintaining a drug premises

Arkansas Code Annotated section 5-64-402 (a)(3) (Repl. 2005), states that it is unlawful for any person:

Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, or other structure or place or premise that is resorted to by a person for the purpose of using or obtaining a controlled substance in violation of this chapter or that is used for keeping a controlled substance in violation of this chapter.

Appellant contends that the trial court lacked sufficient evidence to support its conclusion that she was guilty of the offense of maintaining a drug premises. She argues that it was her husband who had sold the marijuana to the confidential informant and that there was not marijuana “out in the open” in the house. She claims that she was coming out of the bathroom when police entered the house, and that her husband testified that the marijuana cigarette in the bathroom belonged to him. She contends that she cooperated with police, and that she did not know that there were marijuana bricks in her husband’s closet. She argues that there was insufficient evidence that she had knowledge that drugs were present in the house she shared with her husband, who was the focus of the investigation and the execution of the search warrant.

Appellant asserts that the instant case can be distinguished from *Ramey v. State*, 42 Ark. App. 242, 857 S.W.2d 828 (1993), where this court upheld a conviction for maintaining a drug premises where police found marijuana on a person sitting on the defendant's front porch, but found no drugs in the search of the defendant's home. However, in *Ramey*, police had conducted a surveillance of the house and had observed drug trafficking there for several months. They found scales and around six hundred plastic baggies in the house. In addition, several people had come to the house seeking to buy drugs during the police search. Appellant herein claims that there was not any evidence that she was aware that anyone had purchased drugs from her husband at the residence. She also claims that there was no overwhelming evidence that her home was used extensively in drug trafficking.

We hold that appellant's argument is without merit. The police searched her home, which she shares with her husband, pursuant to a search warrant obtained after a confidential informant bought marijuana from appellant's husband at the residence. When they went in the house, officers saw appellant coming out of the bathroom where they found a marijuana cigarette sitting in plain view on the counter. Appellant also admitted to police that she used marijuana. Officers then found several large bricks of marijuana in the closet in the master bedroom, which was shared by appellant and her husband. Appellant pointed out to police the box on the coffee table that contained marijuana, screens, rolling papers, a tobacco grinder, and a razor blade. Based on the foregoing, appellant's knowledge of the use of the premises and the presence of drugs is evident and sufficient to establish her culpability.

Possession of a controlled substance

Appellant contends that her conviction for possession of a controlled substance was not supported by substantial evidence. She argues that the investigation was aimed at her husband and not her. She claims that her conviction was based upon the marijuana cigarette found in the bathroom, but that no one stated how long she had been in the bathroom, and her husband testified that he had rolled the marijuana cigarette that morning. She argues that the court would have had to resort to suspicion and conjecture to convict her of possession. She contends that there was no evidence that she exercised dominion or control over the box of marijuana found in the living room.

Appellant's arguments are not persuasive. Constructive possession may be implied when contraband is found in a home occupied by the accused and another, if there is an additional factor linking the accused to the contraband. *E.g., Stanton v. State*, 344 Ark. 589, 42 S.W.3d 474 (2001). The additional factors must show that the accused had control over the contraband and knowledge of its presence. *Id.* Circumstantial evidence alone may be used to establish this, if such evidence excludes every other reasonable hypothesis but that of guilt, and whether this had been done is a question for the fact-finder. *E.g., Bridges v. State*, 46 Ark. App. 198, 878 S.W.2d 781 (1994). Some circumstances from which control and knowledge may be inferred are proximity of the contraband to the accused, the fact that it is in plain view, and the accused's connection with the property where the contraband is found. *Id.*

The State claims that the instant case is analogous to *Sinks v. State*, 44 Ark. App. 1, 864 S.W.2d 879 (1993), where this court upheld the conviction on evidence that the accused

was found alone in the house, lying asleep on a bed near a plate containing .024 grams of cocaine. Sinks argued that there was insufficient evidence to prove he had control over and knowledge of the cocaine. This court stated that the cocaine was in plain view, in his immediate proximity, and the accused was the only one in the residence at the time of the search. *Id.*, 44 Ark. App. at 4, 864 S.W.2d at 881.

The State argues that in the instant case, appellant was coming out of the bathroom where a marijuana cigarette was lying in plain view on the counter. Appellant was the only person present in the house at the time. Further, she stated to police that she used marijuana and pointed out a box on the coffee table that contained marijuana. We agree with the State that these factors are sufficient to link appellant to the marijuana found in her home.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.